

AMENDED IN SENATE JUNE 16, 2014

AMENDED IN ASSEMBLY MAY 15, 2014

AMENDED IN ASSEMBLY APRIL 22, 2014

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1990**

**Introduced by Assembly Member Gordon  
(Coauthor: Assembly Member Gatto)**

February 20, 2014

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An act to amend Section 113789 of, to amend the heading of Chapter 12.5 (commencing with Section 114375) of Part 7 of Division 104 of, and to add Sections 113752, 113796, 114376, and 114376.5 to, the Health and Safety Code, relating to community food production.

### **LEGISLATIVE COUNSEL’S DIGEST**

AB 1990, as amended, Gordon. Community food production.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities and provides for the enforcement of those standards by local health agencies and by the State Department of Public Health, as specified. The code requires farm stands, as defined, to comply with specified requirements governing food safety and sanitation. A violation of the code is a crime.

This bill would authorize, except under a specified circumstance, a community food producer or a gleaner, as defined, to sell or provide whole uncut fruits or vegetables, or unrefrigerated shell eggs, directly to the public or to a permitted restaurant if the community food producer meets specified requirements, including that the produce is labeled with

the name and address of the community food producer *and that egg production is limited to 15 dozen eggs per month*. The bill would authorize a city or county health enforcement office to require a community food producer to register with the city or county and to provide specified information, including, but not limited to, the name, address, and telephone number of the community food producer. The bill would also authorize an enforcement officer to enter into and inspect the operations of a community food producer in response to a food safety recall or food safety complaint. The bill would authorize an enforcement officer to issue a cease and desist order for violations of these provisions, which would prohibit the community food producer from further sales until the operations of the community food producer are reinspected and cleared by the enforcement officer's agency. The bill would also authorize the enforcement officer to recover reasonable costs associated with an inspection from the community food producer.

Because the bill would create new crimes and would impose additional duties on local food inspectors, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 113752 is added to the Health and Safety
- 2 Code, to read:
- 3 113752. "Community food producer" means a producer of
- 4 agricultural products on land that is not zoned for agricultural use
- 5 but is otherwise in compliance with applicable local land use and
- 6 zoning restrictions, including, but not limited to, restrictions
- 7 governing personal gardens, community gardens, school gardens,
- 8 and culinary gardens.

1 SEC. 2. Section 113789 of the Health and Safety Code is  
2 amended to read:

3 113789. (a) "Food facility" means an operation that stores,  
4 prepares, packages, serves, vends, or otherwise provides food for  
5 human consumption at the retail level, including, but not limited  
6 to, the following:

7 (1) An operation where food is consumed on or off the premises,  
8 regardless of whether there is a charge for the food.

9 (2) Any place used in conjunction with the operations described  
10 in this subdivision, including, but not limited to, storage facilities  
11 for food-related utensils, equipment, and materials.

12 (b) "Food facility" includes permanent and nonpermanent food  
13 facilities, including, but not limited to, the following:

14 (1) Public and private school cafeterias.

15 (2) Restricted food service facilities.

16 (3) Licensed health care facilities, except as provided in  
17 paragraph (13) of subdivision (c).

18 (4) Commissaries.

19 (5) Mobile food facilities.

20 (6) Mobile support units.

21 (7) Temporary food facilities.

22 (8) Vending machines.

23 (9) Certified farmers' markets, for purposes of permitting and  
24 enforcement pursuant to Section 114370.

25 (10) Farm stands, for purposes of permitting and enforcement  
26 pursuant to Section 114375.

27 (c) "Food facility" does not include any of the following:

28 (1) A cooperative arrangement wherein no permanent facilities  
29 are used for storing or handling food.

30 (2) A private home, including a cottage food operation that is  
31 registered or has a permit pursuant to Section 114365.

32 (3) A church, private club, or other nonprofit association that  
33 gives or sells food to its members and guests, and not to the general  
34 public, at an event that occurs not more than three days in any  
35 90-day period.

36 (4) A for-profit entity that gives or sells food at an event that  
37 occurs not more than three days in a 90-day period for the benefit  
38 of a nonprofit association, if the for-profit entity receives no  
39 monetary benefit, other than that resulting from recognition from  
40 participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing ~~plant~~ *establishment* as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

(13) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(14) A community food producer, as defined in Section 113752.

SEC. 3. Section 113796 is added to the Health and Safety Code, to read:

113796. "Gleaner" means a person who legally gathers remnants of an agricultural crop or harvests part of, or all of, an

1 agricultural crop made available by the owner of the agricultural  
2 crop.

3 SEC. 4. The heading of Chapter 12.5 (commencing with  
4 Section 114375) of Part 7 of Division 104 of the Health and Safety  
5 Code is amended to read:

6  
7 CHAPTER 12.5. FARM STANDS AND COMMUNITY FOOD  
8 PRODUCTION  
9

10 SEC. 5. Section 114376 is added to the Health and Safety Code,  
11 to read:

12 114376. (a) Unless a local jurisdiction adopts an ordinance  
13 regulating community food production or agricultural production  
14 that prohibits the activity, a community food producer or gleaner  
15 may sell or provide whole uncut fruits or vegetables, or  
16 unrefrigerated shell eggs, directly to the public, to a permitted  
17 restaurant, or a cottage food operation if the community food  
18 producer meets all of the following requirements *in addition to*  
19 *any requirements imposed by an ordinance adopted by a local*  
20 *jurisdiction*:

21 (1) Agricultural products shall be grown or produced in  
22 compliance with subdivision (b) of Section 113735.

23 (2) Agricultural products shall be labeled with the name and  
24 address of the community food producer.

25 (3) Conspicuous signage shall be provided in lieu of a product  
26 label if the agricultural product is being sold by the community  
27 food producer on the site of production. The signage shall include,  
28 but not be limited to, the name and address of the community food  
29 producer.

30 (4) *Best management practices as described by the Department*  
31 *of Food and Agriculture regarding small farm food safety*  
32 *guidelines on, but not limited to, safe production, processing, and*  
33 *handling of both nonpotentially hazardous and potentially*  
34 *hazardous foods.*

35 (5) *Egg production shall be limited to 15 dozen eggs per month.*

36 (b) A local city or county health enforcement office may require  
37 a community food producer to register with the city or county and  
38 to provide specified information, including, but not limited to, the  
39 name, address, and telephone number of the community food  
40 producer.

1 SEC. 6. Section 114376.5 is added to the Health and Safety  
2 Code, to read:

3 114376.5. (a) An enforcement officer, as defined in Section  
4 113774, may enter into and inspect the operations of a community  
5 food producer in response to a food safety recall or food safety  
6 complaint. The enforcement officer may recover reasonable costs  
7 associated with an inspection from the community food producer.

8 (b) (1) An enforcement officer may issue a community food  
9 producer a cease and desist order for violations of Section 114376,  
10 upon which the community food producer shall be prohibited from  
11 further sales until the operations of the community food producer  
12 have been reinspected and cleared by the enforcement officer's  
13 agency.

14 (2) At any time within 15 calendar days after issuance of the  
15 cease and desist order, the community food producer may request  
16 in writing a hearing before a hearing officer to show cause why  
17 the prohibition of further sales is not warranted. The hearing shall  
18 be held within 15 calendar days of the receipt of a request for a  
19 hearing. A failure to request a hearing within 15 calendar days  
20 shall be deemed a waiver of the right to a hearing.

21 (c) Violations of Section 114376 shall be subject to the penalties  
22 specified in Section 114395.

23 SEC. 7. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution for certain  
25 costs that may be incurred by a local agency or school district  
26 because, in that regard, this act creates a new crime or infraction,  
27 eliminates a crime or infraction, or changes the penalty for a crime  
28 or infraction, within the meaning of Section 17556 of the  
29 Government Code, or changes the definition of a crime within the  
30 meaning of Section 6 of Article XIII B of the California  
31 Constitution.

32 However, if the Commission on State Mandates determines that  
33 this act contains other costs mandated by the state, reimbursement  
34 to local agencies and school districts for those costs shall be made  
35 pursuant to Part 7 (commencing with Section 17500) of Division  
36 4 of Title 2 of the Government Code.